

(2002) 08 GAU CK 0007

In the Gauhati High Court

Case No : Writ Petition (C) No. 335 (AP) of 2001

Lalit Basumatary

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 408, 409, 420

Citation : (2003) 1 GLT 90

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : R. Hazarika, for the Appellant; R.H. Nabam, for the Respondent

Judgement

I.A. Ansari, J.—By this application made under Article 226 of Constitution of India, the Petitioner has approached this Court seeking issuance of Writ/Writs quashing and/or revoking the impugned order of Petitioner's suspension and for directions on the Respondents to hold and conclude departmental proceeding within a reasonable time and also pay to the Petitioner subsistence allowance with all arrears under revised pay scale pursuant to the Government Circular No. FIN(E)/IT/77/97 dated 27.10.97.

2. The Petitioner's case, briefly stated, runs thus: On the basis of an F.I.R. lodged, on 20.03.97, by Respondent No. 4, namely, Executive Engineer (E), Transmission Division, Miao, Changlang, Arunachal Pradesh, alleging, inter alia, misappropriation of Govt. revenue by the Petitioner, while the latter was serving as UDC at Miao Electrical Sub-division, Miao P.S. Case No. 26/97 under Sections 420/408 I.P.C. was registered. Following the registration of the said case, Petitioner was, vide order contained in Memo No. SE/APEC-1/Conf-36/97/373-378, dated 24.09.97, issued by Respondent No. 2, was placed under suspension with effect from 23.07.97 in terms of Rule-10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. By Anr. order issued by Respondent No. 2 vide memo No. SE/APEC-1-Conf-36/97-381-386,

dated 24.09.97, the Petitioner was allowed to draw 50% of his salary as subsistence allowance with effect from 23.07.97 as per provisions of FR 53(i)(ii) (a). As more than one year had elapsed after he was placed under suspension and no departmental proceeding had been drawn and/or initiated against him, the Petitioner challenged, in this writ petition, the acts of the Respondents in keeping the Petitioner under prolonged suspension without initiating any departmental proceeding against him alleging that the action of the Respondents was intended to harass the Petitioner, the same was mala fide, vindictive and illegal and that the Petitioner has not been paid subsistence allowance @ 75% of the salary and allowance from 01.01.96, which was arbitrary in nature inasmuch as after six months of his suspension, the Petitioner was entitled to receive subsistence allowance @ 75% of his salary and allowances as per the relevant rules.

3. Though the Respondents have contested this case, they have not chosen to file any affidavit-in-opposition in the instant case. Hence, the averments and/or statements of facts contained in the present writ petition are to be treated as admitted facts and the matter needs to be disposed of accordingly.

4. I have carefully perused the materials available on record including the impugned suspension order. I have heard Mr. R. Hazarika, learned Counsel for the Petitioner, and Mr. R.H. Nabam, learned Additional Senior Govt. Advocate, appearing on behalf of the Respondents.

5. Before proceeding any further, it may be mentioned that by an order, dated 23.04.2002, passed in this case, this Court put the impugned order of suspension in abeyance and directed the Respondents to reinstate the Petitioner in service and to allow him to work, as usual, as UDC. While giving the directions aforesaid, this Court observed as follows:

An employee can be placed and put under suspension pending enquiry or disciplinary proceeding for a longtime, in other words, pending investigation or trial of criminal case in which, the employee has been alleged to have been involved. To place an employee under suspension under such condition mentioned above, vest upon the wisdom and domain of the appointing authority or disciplinary authority but, law is that an employee shall not be placed under suspension for an indefinite period and he should not be placed under hardship and distress by virtue of the long pending enquiry or disciplinary proceeding. Generally and ordinarily, the competent authority or disciplinary authority should complete the enquiry of disciplinary proceeding at the earliest, i.e. within the minimum period which has been prescribed by law i.e. 3 (three) months which also can be extended from time to time with a specific order passed by the authority concerned, in other words, the employee should not be kept under suspension for a long period or indefinite period beyond the prescribed limit which is not permissible under the service Jurisprudence. In the instant case, the Petitioner has been placed under suspension in the year 1997 vide order dated 24.09.97 (Annexure-A to the writ petition). Be that as it may, at this stage, I am

of the view that as the authority concerned could not complete the disciplinary proceeding or enquiry after the impugned suspension order was passed in the year 1997, it would be just and proper to suspend the impugned suspension order at this stage and, accordingly, the impugned suspension order dated 24.09.97 as in Annexure-A to the writ petition shall remain suspended until further orders of the Court. It means that the Petitioner shall be reinstated in service and he may be allowed to work as UDA as usual.

6. I am largely in agreement with the above observations made by this Court on 23.04.2002. Though the power of the appointing and/or controlling authority to place under suspension an employee under their control, if bona fide, may not be questioned, yet the fact remains that keeping an employee under suspension for inordinately long period without initiating any departmental proceeding is not only, as indicated hereinabove, against the spirit of service jurisprudence, but also against the principles of natural justice inasmuch as keeping a person under such long suspension without initiating departmental proceeding is against the fair sense of justice and the disciplinary authorities must bear in mind that delay defeats justice. I am tempted to quote here the observations made by Apex Court in State of Andhra Pradesh Vs. N. Radhakishan, which runs as follows:

If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen that as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

(Emphasis is added)

7. In view of the fact that no departmental proceeding has been initiated since after placing of the Petitioner under suspension, vide order, dated 24.09.97 aforementioned and a period of as much as four-and-half years has already passed, it will be unjust and unfair to keep the Petitioner under suspension.

8. In short, for what have been discussed above, I am firmly of the view that the impugned order of suspension, in the facts and attending circumstances of the case at hand, can not be allowed to stand good on record inasmuch as same is against the fair sense of justice. This, however, does not mean, I must hasten to add, that departmental proceeding against an employee in a serious case of misappropriation can not be initiated for the mere reason that there is delay in initiating the proceeding. In this regard, following observations made by the Apex Court in N. Radhakishan's case (supra) may be referred to:

It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred.

(Emphasis is supplied)

9. In the case at hand, there is absolutely no reason assigned by the Respondents to show as to why the departmental proceeding could not be initiated against him during the last four-and-half years. However, in view of the fact that the Petitioner has not contended that no departmental proceeding on account of delay, should be initiated and in view also of the fact that the case registered against the Petitioner is u/s 420/409 I.P.C., Respondents have to be given the liberty to initiate, if deemed necessary, departmental proceeding against the Petitioner and conclude the same within a given time frame. This apart, since the Petitioner has remained under suspension for more than six months and he is, admittedly, entitled to receive 75% of the salary and allowances under the revised pay scale pursuant to the Government Memo No. FIN/E/II/77/97, dated 27.10.97, aforementioned with all arrears accrued thereon, Petitioner's all the dues need to be paid within a reasonable period.

10. In the result, and for the reasons discussed above, the interim order, dated 23.04.2002, aforementioned is made absolute, Petitioner's suspension is set aside and quashed. The Petitioner is directed to be kept reinstated in service and he shall be paid subsistence allowance as indicated hereinabove. It is further directed that the disciplinary authority concerned may, if deemed necessary, initiate departmental proceeding against the Petitioner within a period of two months from today and not thereafter, but in case such a proceeding is initiated, the same shall be concluded and disposed of expeditiously and, at the most, within a period of six months from the date of commencement of the proceeding, provided that the Petitioner does not cause delay in the progress of the proceeding, if drawn.

11. With the above observations and directions, this writ petition shall stand disposed of.

12. No orders as to costs.